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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1418

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION; RICHARD J. DALEY, MAYOR OF THE CITY OF CHICAGO; AND JAMES B. CONLISK, JR., SUPERINTENDENT OF THE CHICAGO POLICE DEPARTMENT,

Petitioners,

vs.

CONFEDERATION OF POLICE, A NOT-FOR-PROFIT CORPORATION, AND THE CLASS OF THE CONFEDERATION OF POLICE, BY JAMES M. JOHNSON, JAMES T. BRUCE, FRANK GRASZIER, JOHN BURSINSKI, THOMAS HOFFMAN AND JACK HAWKONSEN,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

GILBERT A. CORNFIELD,
10 South LaSalle Street,
Suite 452,
Chicago, Illinois 60603,
Attorney for Respondents.

CORNFIELD AND FELDMAN,
Of Counsel.

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The Respondents do not concur in the Petitioners' request that a Writ of Certiorari issue.

The parties to this litigation are, as plaintiffs, an organization of several thousand uniformed police officers, constituting the majority of the patrolmen of the City of Chicago and the chief executive officers of the City and its Police Department and the City, a municipal corporation, as defendants.

The entire class of plaintiffs are civil service employees, pursuant to State statutes and municipal ordinance. The police

officers are "tenured" in their employment with the City, subject to dismissal only upon specific charges and hearing before a civil service commission.

STATEMENT OF THE CASE.

Evidence Before the District Court.

The record at trial established the following salient points:

(1) The police officers are at frequent, regular intervals subject to written evaluations by various superiors, which are permanently maintained as part of their personnel files. Although these evaluations are used to promote and demote the officers to and from higher status and paying positions and may be considered in subsequent disciplinary proceedings, the affected officers have neither access to the evaluations or an opportunity to obtain some reasonable form of impartial review.

(2) The police officers may be subject to other forms of significant adverse actions in connection with their employment, such as a change in watch (day to night shift) or basic assignments without any recognized procedure to elicit the reasons for such action and to obtain a reasonable form of impartial review if the reasons relate to an evaluation of the patrolman's performance.

(3) Evidence adduced at the District Court hearing set forth numerous examples of the types of adverse treatment, including loss of income and position, to which the police are subjected without being afforded the basic reasons for the action and a means to effect appeal. In fact, as noted by the Court of Appeals, officers of the Respondent organization experienced unexplained demotions and adverse job reassignments after assuming principal offices in the Confederation of Police.

The District Court's Findings.

The District Court refused to apply the due process guarantees of the Fourteenth Amendment to the lack of any "grievance procedure" among the uniformed civil service employees of the City's Police Department solely on the basis that they are police. The Court of Appeals reversed on the principal reason that the fact the affected employees are police does not exempt the application of the Fourteenth Amendment. The form of procedure for this category of public employees must be appropriate and reasonable to the conditions of the employment, reasoned the Court of Appeals. Consistent with its holding, the Court of Appeals remanded the case to the District Court for hearing and consideration of a procedure which would provide the police with a system for obtaining reasons and impartial review of negative evaluations, demotions and other similar adverse decisions which affect the conditions of their employment.

The Petition for Rehearing En Banc.

Following the decision of the Court of Appeals, the Petitioners unsuccessfully sought an *en banc* rehearing. The focus of the Petitioners' petition was the same contention they now advance before the Supreme Court. The Petitioners maintain that the decisions of the Supreme Court in *Board of Regents* v. *Roth*, 408 U. S. 564 (1972); *Perry* v. *Sindermann*, 480 U. S. 593 (1972) and *Goss* v. *Lopez*, 419 U. S. 565 (1975), stand for the principle that "tenured" public employees (such as certified civil service employees) are entitled to no form of due process rights or the effective right to seek redress of grievances in contesting actions which adversely affect their continuing employment conditions or their status and income, unless these rights are clearly established by state or local law.

We submit that the Petitioners' position, when logically pursued, reduces the rights set forth in the First, Fifth and Four-

teenth Amendments to the Constitution of the United States to an ill-defined, subsidiary role to the myriad of laws and policies of local government officials.

Consistent with the extreme position advanced by the Petitioners is their insistence that the totality of due process and grievance rights of the City police (and other certified civil service employees) is that contained in the state enabling statute, providing a hearing before a board in the case of suspensions in excess of 30 days and discharge. In the Respondents' reply to the Petitioners' request for *en banc* rehearing, we cited numerous statutory provisions expressing the rights of civil service employees to be free from arbitrary and discriminatory treatment in connection with their employment. The entire statute, applicable to the police, as well as the other civil service employees, is encompassed under Article 10, Division 1 of the Municipal Code, Chapter 24 Illinois Revised Statutes §§ 10-1-1 *et seq*. A review of only some of the clauses of Division 1 underscores the expressed public interest in maintaining a system of public employment in the City of Chicago which will assure that non-discriminatory objective principles, with recognition of merit, will only be employed in its administration:

Sections 10-1-17, 10-1-13—An objective system of examinations for initial employment and promotion.

Section 10-1-20—Investigation authority by the civil service commission of ". . . the conduct and action of the appointees in the classified services in its municipality."

Sections 10-1-34, 10-1-33, 10-1-28, 10-1-27—Prohibitions against political solicitations.

Section 10-1-26—Prohibition against misconduct in connection with civil service examinations or conveying ". . . special or secret information for the purpose of either improving or injuring the prospects of chances of any person so examined, or to be examined, being appointed, employed or promoted."

Section 10-1-31—Prohibition against corrupt practices in connection with ". . . discharge or degrade or promote, or in any manner change the official rank or compensation of any other officer or employee. . . ."

ARGUMENT.

The Petition for the Issuance of a Writ of Certiorari, If to Be Considered, Is Premature.

The Petitioners desire the Supreme Court to issue a blanket ruling that due process and the effective right to seek redress of grievances for public employees is not applicable unless provided by the states. The Petitioners overlook a fundamental consideration—the guarantees of the Constitution are designed not only to protect the individual citizen from governmental action which may deprive the individual of a right or interest, but the public in general from arbitrary and secretive actions of elected or appointed government officials.

At this juncture, the subject decision of the Court of Appeals can only be reversed if the Supreme Court is prepared to hold that the Police Department of the City of Chicago, or any other public body, may be conducted secretively and without reasonable accountability, except when a policeman is discharged or receives a disciplinary suspension for more than 30 days.

The Petitioners' position fails to consider the interrelationship between the rights of the public and the interest of public employees in continuous service to be free from the arbitrary administration of the public's affairs by its officials. *Handler* v. *San Jacinto Junior College*, 519 F. 2d 273 (C. A. 5, 1975); *Fisher* v. *Snyder*, 476 F. 2d 375 (C. A. 8, 1973).

The Respondents respectfully advise the Court to allow the District Court to review the appropriate grievance procedures applicable to the police of the City of Chicago, including considerations which may be advanced by the Petitioners, before reviewing the abstract question posed by the Petition for a Writ of Certiorari.

CONCLUSION.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

GILBERT A. CORNFIELD,
10 South LaSalle Street,
Suite 452,
Chicago, Illinois 60603,
Attorney for Respondents.

CORNFIELD AND FELDMAN,
Of Counsel.